

FOURTH AMENDMENT TO THE INDIANA TOLL ROAD CONCESSION AND LEASE AGREEMENT

This Fourth Amendment to the Indiana Toll Road Concession and Lease Agreement (this "Fourth Amendment") is made and entered into, as of this 5th day of February 2008, by and between the Indiana Finance Authority, a public body politic and corporate of the State of Indiana (the "IFA") and ITR Concession Company LLC, a Delaware limited liability company (the "Concessionaire") (collectively, the "Parties").

RECITALS

WHEREAS, the IFA and the Concessionaire are parties to that certain Indiana Toll Road Concession and Lease Agreement, dated April 12, 2006 (as amended by that First Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, as further amended by that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, and further amended by that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated August 10, 2007 (the "Concession Agreement"); and

WHEREAS, the Parties desire to amend the Concession Agreement as set forth herein;
and

WHEREAS, all capitalized terms used in this Fourth Amendment but not otherwise defined herein shall have the respective meanings given to such terms in the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and in the Concession Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound, hereby agree as follows:

SECTION 1. Section 1.1 of the Concession Agreement is hereby amended by inserting the following new definitions in said Section in alphabetical order:

"Additional Lost Revenues" has the meaning ascribed in Section 12.14.

"Eligible Electronic Transponder Users" means Class 2 Users who utilize electronic toll collection transponders authorized for use on the Toll Road.

"Reimbursement Account" has the meaning ascribed in Section 12.14.

"Termination Notice" has the meaning in Section 12.14(d).

"Toll Rebate Period" means the period of time beginning on the date immediately following the date on which the Toll Freeze Period ends and ending on the first to occur

of (i) June 30, 2016 or (ii) the termination date determined pursuant to Section 12.14(d), of this Agreement.

"Toll Road Rebate Rates" are defined as the toll rates for Eligible Electronic Transponder Users as established in Schedule 12.14 attached to this Fourth Amendment, as may be revised from time to time by the IFA at its option.

SECTION 2. Article 12 of the Concession Agreement is hereby amended by deleting in its entirety Section 12.13(b) and inserting the following new Section 12.13(b) in lieu thereof:

(b) Upon the termination of the Toll Freeze Period the Concessionaire shall transfer the funds remaining in the Toll Freeze Deposit Account to the Reimbursement Account as provided in Section 12.14(b).

SECTION 3. Upon termination of the Toll Freeze Period, the Commuter Discount program shall be discontinued and any and all Commuter Identification Cards will be deactivated.

SECTION 4. Article 12 of the Concession Agreement is hereby amended by inserting the following new Section 12.14 immediately following Section 12.13 appearing therein:

"Section 12.14. "Section 12.14 Electronic Toll Collection Reimbursement"

(a) During the Toll Rebate Period, the IFA shall, in accordance with the mechanism set forth in this Section 12.14, pay to the Concessionaire, with respect to Eligible Electronic Transponder Users the difference between (i) the actual tolls collected pursuant to the Toll Road Rebate Rates for Eligible Electronic Transponder Users and (ii) the tolls that would have been collected from such Eligible Electronic Transponder Users had the Concessionaire charged such persons the Contract Toll Rates (such difference, the "Additional Lost Revenues"). This Section 12.14 shall remain in effect and in force until all monies from the Reimbursement Account (as defined below) have been disbursed pursuant to Section 12.14(c) and Section 12.14(f).

(b) Upon termination of the Toll Freeze Period and in order to fund the payments required to be made pursuant to this Section 12.14, the IFA shall allocate \$60,000,000.00 to fund the Reimbursement Account. In addition, any and all monies not already disbursed from the \$60,000,000.00 allocated pursuant to Section 12.13, shall be deposited in the Reimbursement Account. The Reimbursement Account shall be a separate interest bearing account established in the name of the Concessionaire, at a bank mutually acceptable to the IFA and the Concessionaire and located in the State of Indiana. During the Toll Rebate Period the Concessionaire shall have the right to transfer the Reimbursement Account to another bank located in Indiana subject to the IFA's consent, which consent shall not unreasonably be withheld or delayed. The Concessionaire shall have exclusive dominion and control over the Reimbursement Account and the funds on deposit therein (including with respect to any withdrawals from such Reimbursement Account in accordance with the terms of Section 12.14(c)). The

Concessionaire's rights with respect to any funds on deposit in the Reimbursement Account shall be in addition to any of the Concessionaire's rights and remedies under this Agreement that may be available to it in respect of any failure by the IFA to comply with its obligations under this Agreement; provided, however, that the Concessionaire, other than as set forth below, shall use the Reimbursement Account, and any investments made therefrom, solely to fund reimbursement of Additional Lost Revenues and shall not use (and the IFA shall not request, authorize or direct the Concessionaire to use) the funds in such Reimbursement Account for any other purpose, including the payment of Concession Compensation or other damages or reimbursement to which the Concessionaire may be entitled under the terms of this Agreement. The funds in the Reimbursement Account shall be invested as mutually agreed by the Parties, and if the Parties are unable to reach such an agreement, the funds shall be invested in Permitted Investments.

(c) At the IFA's request, the Concessionaire shall provide the IFA with copies of account balances showing income and disbursements, if any, of the funds in the Reimbursement Account. The Concessionaire shall also provide the IFA with a copy of the monthly summary of the Reimbursement Account provided by the bank. The Concessionaire shall document the Electronic Transponder User traffic and calculate the Additional Lost Revenues based on such traffic in ten (10) Calendar Days intervals and shall deliver to the IFA a schedule detailing the Additional Lost Revenues within five (5) Business Days thereafter. Immediately following the delivery of the calculation of the Additional Lost Revenues, the Concessionaire may, to the extent of available funds therein, without any consent, approval or confirmation, withdraw the Additional Lost Revenues amount set forth in such schedule for such period of time from the Reimbursement Account. The IFA shall have six months after receipt of such schedule to either agree to or object to the calculation of such Additional Lost Revenues amount for such time period. During such six month period, in addition to the audit rights set forth in Article 8, the Concessionaire will make representatives of the Concessionaire available upon reasonable notice and at reasonable times to answer questions related to the Additional Lost Revenues amount and deliver any additional information that the IFA may reasonably request in order to verify the calculation of such Additional Lost Revenues amount for such time period. If the IFA objects to the calculation of such Additional Lost Revenues amount, the parties shall resolve the dispute as provided in Article 19, provided that any arbitration panel shall consist of arbitrators that are certified public accountants from independent, nationally recognized accounting firms (which may not be the existing accounting firm of the IFA or the Concessionaire) and nationally recognized traffic consultants (with such panel to include at least one arbitrator from each category). In the event that the IFA prevails in its dispute, as the result of the procedures set forth in Article 19, then within ten (10) days after such final determination, the Concessionaire will deposit the disputed amount back in the Reimbursement Account or, if such final determination occurs after the end of the Toll Rebate Period, the Concessionaire shall directly reimburse the IFA.

(d) It is the expectation of the parties that the Toll Rebate Period shall continue in effect until June 30, 2016. However, in order to maintain flexibility to respond to future

circumstances, the IFA shall have the right to terminate the Toll Rebate Period by delivering a notice to such effect to the Concessionaire (the "Termination Notice") which notice shall include the date on which the Toll Rebate Period shall end, which date shall be determined by the IFA in its sole discretion, but will not be fewer than one hundred twenty (120) calendar days following the date on which the Termination Notice was delivered to the Concessionaire.

(e) The IFA shall pay, or to the extent already paid by the Concessionaire, reimburse the Concessionaire for the management and operation fees incurred as the result of the administrative obligations imposed by this Fourth Amendment. The payment provided for herein shall be made on an annual basis in the amount of \$10,000 per year, which shall be adjusted annually in accordance with the Index, as defined in the Concession Agreement.

(f) The Concessionaire shall notify the IFA at such time as the balance in the Reimbursement Account first falls below \$30 million. Upon receipt of such notification, the IFA shall deposit in the Reimbursement Account sufficient funds to restore the balance in such account to \$60 million, provided, however, that the Parties shall periodically review the balance of such account in light of the remaining term of the Toll Rebate Period and the rate at which such funds are being drawn by the Concessionaire pursuant to Section 12.14 and shall agree to restore the balance to an amount less than \$60 million as conditions warrant.

(g) Upon the termination of the Toll Rebate Period and following the implementation of the tolls at the Contract Toll Rate, the Concessionaire shall, within ten (10) Business Days, disburse the funds remaining in the Reimbursement Account, if any, after the application of all payments of Additional Lost Revenues owed to the Concessionaire pursuant to this Section 12.14, to the IFA, including all interest accrued with respect to such funds and remaining on deposit in the Reimbursement Account at such time, net of any applicable taxes.

SECTION 5. Schedule 7.1 to the Concession Agreement is hereby amended by:

(i) deleting the text "Except as provided in Section 3(e) hereof, the maximum toll levels from Class 2 Users" appearing in Section 3(a)(i) of such Schedule and inserting the text "Except as provided in Section 3(e) or 3(f) hereof" in lieu thereof.

(ii) inserting at the end of Section 3(e)(i) the following language: "Notwithstanding anything to the contrary set forth herein, during the Toll Rebate Period the toll levels applicable to Eligible Electronic Transponder Users may not be increased above the Toll Road Rebate Rates."

(iii) deleting the existing Section 3(e)(ii) and inserting in its place the following new Section 3(e)(ii) in lieu thereof.

(ii) *During the Toll Rebate Period.* Immediately upon the termination of the Toll Freeze Period, the Concessionaire shall be entitled to increase the tolls applicable to Class 2 Users (including former Commuter Discount Users) who are not Eligible Electronic Transponder Users to the Contract Toll Rate without the approval or consent of the IFA, any other governmental entity or any other Person. The right of the Concessionaire to increase the tolls in the manner contemplated in the immediately preceding sentence shall be without prejudice and shall not otherwise hinder, limit or affect any of its rights pursuant to this Schedule 7.1, including, without limitation, any right to further increase such tolls in accordance with Section 3(a) of this Schedule 7.1.

(iv) inserting the following new Section 3(f) immediately following Section 3(e) appearing therein:

(f) Period After the Termination of the Toll Rebate Period. Immediately upon the termination of the Toll Rebate Period, the Concessionaire shall be entitled to increase the tolls applicable to Eligible Electronic Transponder Users to the Contract Toll Rate without the approval or consent of the IFA, any other governmental entity or any other Person. The right of the Concessionaire to increase the tolls in the manner contemplated in the immediately preceding sentence shall be without prejudice and shall not otherwise hinder, limit or affect any of its rights pursuant to this Schedule 7.1, including, without limitation, any right to further increase such tolls in accordance with Section 3(a) of this Schedule 7.1.

SECTION 6. This Fourth Amendment is limited as specified and shall not constitute a modification, acceptance or waiver of any other provision of the Concession Agreement. The parties hereto reconfirm the agreements, rights and remedies as set forth in the Concession Agreement.

SECTION 7. This Fourth Amendment may be executed in multiple counterparts, each of which will be considered an original. Facsimile signatures of original signatures shall be deemed original signatures. Only one counterpart of this Fourth Amendment executed by the party against which it will be enforced need be provided to evidence this Fourth Amendment.

SECTION 8. This Fourth Amendment shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Indiana (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

SECTION 9. From the date on which this Fourth Amendment shall have been executed by the IFA and the Concessionaire, all references in the Concession Agreement to the Concession Agreement shall be deemed to be references to the Concession Agreement as modified hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the date set forth above.


"IFA"

INDIANA FINANCE AUTHORITY

By: Jennifer M. Alvey
Printed: Jennifer M. Alvey
Title: Public Finance Director

"CONCESSIONAIRE"

ITR CONCESSION COMPANY LLC

By: 
Printed: FERNANDO REDONDA
Title: CEO

Signature Page to Fourth Amendment of Concession and Lease Agreement